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No. 90-1474

In The

Supreme Court of the United States

October Term, 1990

JOHN DAVID McGEE and HANAHAN MOTORS, INC.,

Petitioners,

v.

CRYSTAL G. BROWN,

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of South Carolina

BRIEF IN OPPOSITION

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENT 2

ARGUMENT 3

CONCLUSION 8

APPENDICES ..... App. 1

TABLE OF AUTHORITIES

Page

CASE

Bell v. Maryland, 378 U.S. 226 (1964) 7

Broom v. Southeastern Highway Contracting Company, Inc., 291 S.C. 93, 352 S.E.2nd 302 (Ct.App.1986) 4, 5

Crocker v. Barr, 295 S.C. 195, 367 S.E.2nd 471 (Ct.App.1988) 5

Henry v. Mississippi, 279 U.S. 443 (1965) reh. den. 380 U.S. 926 (1965) 7

Herndon v. Georgia, 295 U.S. 441 (1935) 8

Hudson v. Hudson, 294 S.C. 166, 363 S.E.2nd 387 (Ct.App.1987) 6

Kneece v. Kneece, 296 S.C. 28, 370 S.E.2nd 288 (Ct.App.1988) 5

Kolb v. Nash, 245 S.C. 25, 138 S.E.2nd 417 (1964) 5

Murphy v. Hagan, 275 S.C. 334, 271 S.E.2nd 311 (1980) 5

Odom v. Florence County, 258 S.C. 480, 189 S.E.2nd 293 (1972) 5

Pacific Mutual Life Insurance Company v. Haslip, 59 U.S.L.W. 4157 (U.S. March 4, 1991) (No. 89-1279) ... 8, 9

Peoples National Bank of Greenville v. Manos Brothers, Inc., 226 S.C. 257, 84 S.E.2nd 857 (1955) 5

Priester v. Brabham, 230 S.C. 201, 95 S.E.2nd 167 (1956) 5

Reid v. Hardware Mutual Insurance Company of the Carolinas, 252 S.C. 339, 166 S.E.2nd 317 (1969) 5

TABLE OF AUTHORITIES – Continued

Page

Rowe v. Frick, 250 S.C. 499, 159 S.E.2nd 47 (1968) 5

Webb v. Webb, 451 U.S. 493 (1981) 7

South Carolina Rules

S.C. SUP. CT. R.4, § 6 5

SCACR 207 (b)(1)(ii) 6

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BRIEF IN OPPOSITION

STATEMENT OF THE CASE

In February 1988 the Plaintiff filed this tort action in the Court of Common Pleas, Charleston County, South Carolina. She sought actual and punitive damages for personal injuries she sustained in an automobile collision which occurred in Charleston County, on April 4, 1987 (see Petitioners' Appendix F). The Defendants filed a qualified general denial (see Petitioners' Appendix E).

On March 28, 1989 the case was called to trial. At that time the Defendants moved to strike Plaintiff's prayer for punitive damages on the basis that punitive damages are

an unconstitutional violation of due process (see Petitioners' Appendix C). That motion was denied (see Petitioners' Appendix C). On March 30, 1989 the jury returned a verdict for actual damages in the amount of sixty-seven thousand five hundred (67,500) dollars and awarded punitive damages in the amount of one hundred thousand (100,000) dollars (see Petitioners' Appendix B).

Defendants thereafter moved for judgement NOV as to punitive damages without elaborating the reasons therefor (see Petitioners' Appendix C). A timely appeal was then filed in the South Carolina Supreme Court on the grounds that (1) the lower Court erred in several evidentiary rulings, and (2) punitive damages violate the due process clause of the United States Constitution (see Petitioners' Appendix D and Respondent's Appendix B). By *per curiam* memorandum opinion filed December 20, 1990 the South Carolina Supreme Court affirmed the trial court, citing authority that an objection must be sufficiently specific to bring into focus the precise nature of the alleged error (see Petitioners' Appendix A).

SUMMARY OF ARGUMENT

THE DECISION OF THE SOUTH CAROLINA SUPREME COURT IS SUPPORTED BY ADEQUATE STATE PROCEDURAL GROUNDS, WHICH BARS FURTHER REVIEW IN THE UNITED STATES SUPREME COURT: NO FEDERAL QUESTION DECIDED

In the trial court the Defendants lodged a non-specific objection to the constitutionality of punitive damages *per se* (see Petitioners' Appendix C). The Defendants did not make any reference to the State's procedures for awarding punitive damages. The trial court refused to

rule that punitive damages awards are unconstitutional (see Petitioners' Appendix C). By way of exceptions on appeal to the South Carolina Supreme Court the Defendants again alleged without specification that punitive damages violate the due process clause of the United States Constitution. None of the Defendants' exceptions on appeal specified any objections to the South Carolina procedure for awarding punitive damages (see Respondent's Appendix B). The Defendants argued for the first time in their brief on appeal to the South Carolina Supreme Court that South Carolina's procedure for awarding punitive damages was unconstitutional (see Petitioners' Appendix D). The South Carolina Supreme Court affirmed the trial court on the State procedural grounds that an objection must be sufficiently specific to bring into focus the precise nature of the alleged error (see Petitioners' Appendix A). The South Carolina Supreme Court did not decide the federal questions of whether punitive damages or the South Carolina procedure for awarding punitive damages violates the due process clause of the United State Constitution (see Petitioners' Appendix A).

ARGUMENT FOR DENYING PETITION FOR WRIT OF CERTIORARI

In their statement of the case the Petitioners repeatedly assert that in the lower court they moved to strike Plaintiff's prayer for punitive damages on the basis that South Carolina's procedures for awarding punitive damages violate the due process clause of the United States Constitution, and that on this same ground appeal was taken to the South Carolina Supreme Court. In fact, in the

trial court, and by way of exceptions to the South Carolina Supreme Court, the Petitioners raised only the general question of the constitutionality of punitive damage awards, *per se* (see Petitioners' Appendix C, App. 6 and Respondent's Appendix B); the question of the constitutionality of South Carolina's procedures for awarding punitive damages was raised for the first time in the Petitioners' brief on appeal to the South Carolina Supreme Court (see Petitioners' Appendix D, App. 26). The South Carolina Supreme Court affirmed the trial court on the grounds that the Petitioners' objection was not specific enough to bring into focus the precise nature of the alleged error.

It is a well-settled matter of procedural law in South Carolina that an objection should be sufficiently specific to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the trial judge. *Broom v. Southeastern Highway Contracting Company, Inc.*, 291 S.C. 93, 352 S.E.2nd 302 (Ct.App.1986). In *Broom* counsel objected to a request to charge the jury on the grounds that the charge was not a proper statement of the law. Counsel did not explain to the trial judge the specific problem or problems counsel had with the charge. The South Carolina Supreme Court held that the objection that the request was not "a proper statement of law" without specifying why it was not so was too general to be considered on appeal. In the present case counsel for the Petitioners summarily moved to strike punitive damages on the grounds that punitive damages are "unconstitutional, in violation of due process" (see Petitioners' Appendix C, App. 6). Counsel did not specify why punitive damages are an unconstitutional violation of due

process, nor did counsel make any argument concerning South Carolina's procedures for awarding punitive damages. The South Carolina Supreme Court properly applied the case of *Broom v. South Eastern Highway Contracting Company, Inc., supra,* and affirmed the trial court on State procedural grounds without reaching the federal question Petitioners allegedly raised.

In order to preserve an issue on appeal in South Carolina not only must a sufficiently specific objection be raised in the trial court but the objection must be properly presented as an exception in the South Carolina Supreme Court. *Murphy v. Hagan,* 275 S.C. 334, 271 S.E.2nd 311 (1980); *Priester v. Brabham,* 230 S.C. 201, 95 S.E.2nd 167 (1956); *Peoples National Bank of Greenville v. Manos Brothers, Inc.,* 226 S.C. 257, 84 S.E.2nd 857 (1955); *Kneece v. Kneece,* 296 S.C. 28, 370 S.E.2nd 288 (Ct.App.1988); *Crocker v. Barr,* 295 S.C. 195, 367 S.E.2nd 471 (Ct.App.1988). Exceptions must be phrased so as to present some distinct principle of law which appellant claims to have been violated, to point out some specific error complained of, and to present it in such form and manner that the point at issue may be readily recognized and properly reviewed. S.C. SUP. CT. R.4, § 6; *Odom v. Florence County,* 258 S.C. 480, 189 S.E.2nd 293 (1972). The South Carolina Supreme Court will not consider exceptions which are general, vague and indefinite.

S.C. SUP. CT. R.4, § 6; *Rowe v. Frick,* 250 S.C. 499, 159 S.E.2nd 47 (1968). An issue will not be considered on appeal where it is argued in appellant's brief but not supported by an exception. *Reid v. Hardware Mutual Insurance Company of Carolinas,* 252 S.C. 339, 166 S.E.2nd 317 (1969); *Kolb v. Nash,* 245 S.C. 25, 138 S.E.2nd 417 (1964);

Hudson v. Hudson, 294 S.C. 166, 363 S.E.2nd 387 (Ct.App.1987). In this case, the South Carolina Supreme Court ruled that the Petitioners' objection was not specific enough in the first instance, in the trial court. However a review of the record shows that the South Carolina Supreme Court could also have ruled that the Petitioners' exception was too general, vague and indefinite to be considered. Further the South Carolina Supreme Court could have ruled that the issue of the constitutionality of South Carolina's procedures for awarding punitive damages could not be considered on appeal where it was argued in the appellants' brief but not supported by an exception which merely raised the constitutionality of punitive damages *per se*. Thus, there were several adequate and independent State procedural grounds upon which the State court decision might have rested in addition to the grounds cited by the court.[1]

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[1] The South Carolina Supreme Court Rules were in effect when this case was tried, appealed by notice of intent to appeal, briefed and docketed. The Supreme Court Rules were repealed and replaced by the South Carolina Appellate Court Rules (SCACR) effective September 1, 1990. This case was heard and decided after the effective date of the SCACR. However, Rule 102, SCACR provides that where notice of intent to appeal was served before the effective date of SCACR, the appeal shall proceed to conclusion under the Supreme Court Rules. Interestingly, exceptions are no longer required under SCACR, however, Rule 207 (b)(1)(ii) requires the Appellant's brief to contain a concise and direct statement of issues on appeal, and further cautions that ordinarily, no point will be considered which is not set forth in the statement of issues on appeal. Thus, the requirement of specificity in issues raised appears to remain intact in state appellate procedure.

(Continued on following page)

The Petitioners argue in a footnote that specificity is not relevant because a more specific objection would not have yielded a different result in the trial court. That has no bearing upon the issue of whether this Court should grant certiorari. What is significant is that a more specific objection may have yielded a different result in the State appellate court because it might then have had a basis to rule on a federal question. The lack of specificity in the trial court precluded review of the federal question by the State appellate court, and consequently precludes review by this Court.

In order for a State court case to be reviewed in the United States Supreme Court it must appear from the record that a federal question was decided by the State court. The record must show expressly or by necessary implication that a federal question was adequately presented in the state system and actually decided by the State courts adversely to the petitioner in the United States Supreme Court. *Webb v. Webb*, 451 U.S. 493 (1981). It is a well settled doctrine that the United States Supreme Court will decline to review a decision of a State court which rests upon adequate and independent non-federal grounds. *Bell v. Maryland*, 378 U.S. 226 (1964). The judgment of a state Court which is supported by adequate state procedural grounds will bar review by the United State Supreme Court. *Henry v. Mississippi*, 379 U.S.

(Continued from previous page)

Moreover, the requirement of specificity for trial court objections, the actual state procedural ground upon which the state appellate court rejected this appeal, is in no way affected by the adoption of the SCACR.

443 (1965), reh. den. 380 U.S. 926 (1965). The failure to preserve an issue for appeal such as by properly making exceptions or assigning objections constitutes adequate state procedural grounds which result in a waiver of a federal question and bar review by the United States Supreme Court, *Herndon v. Georgia*, 295 U.S. 441 (1935). As the record indicates in this matter the South Carolina Supreme Court has not decided a federal question. This Court should therefore decline to review this case.

If this Court were to determine that a federal question is properly presented, the recent case of *Pacific Mutual Life Insurance Company v. Haslip*, 59 U.S.L.W. 4157 (U.S. March 4, 1991) (Number 89-1279) would be controlling. In *Haslip* this Court stated that the common-law method for assessing punitive damages is not so inherently unfair as to deny due process and be *per se* unconstitutional, and held that the punitive damages assessed in *Haslip* did not violate due process since the award did not lack objective criteria and had the benefit of the full panoply of procedural protections.

CONCLUSION

The record in this case clearly shows that a federal question was neither adequately presented in the state system, nor actually decided by the state courts. Under state procedural law, the Petitioners' failed to make a sufficiently specific objection to punitive damages in the trial court and sufficiently specific exception on appeal to the State's highest court. The ruling by the South Carolina

Supreme Court on adequate and independent State procedural grounds precludes review by this Court; no federal question is preserved.

Should this Court determine that a federal question is properly before this Court, *Haslip, supra,* would be dispositive of the issue raised by Petitioners below. There has been no constitutional deprivation of due process in this award of punitive damages.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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INDEX TO APPENDIX

Page

Appendix A – Partial Transcript of Trial Court Proceedings Containing Jury Charges on Punitive Damages.....App. 1

Appendix B – Appellants' Exceptions raised in State Supreme Court Appeal on issue of punitive damages.....App. 5

APPENDIX A

JURY CHARGES ON PUNITIVE DAMAGES

Additionally, the Defendants deny that the Defendant McGee acted recklessness, [sic] wilfully and wantonly, and that there was any recklessness – that any recklessness was a proximate cause of injury to the Plaintiff.

So you will have to make decisions with regard to those issues.

Should you decide that the Plaintiff is entitled to a verdict, your next step would be to decide how much money the Defendant should be required to pay. We call such an award damages.

Damages are divided into two categories, actual damages and punitive damages.

Actual damages are intended to compensate injured parties. That is, to put that party as nearly as possible back in the same position that they were in before the incident occurred.

In other words, actual damages would be the actual losses or expenses which Plaintiff has suffered because of the Defendant's actions.

Punitive damages, as the name implies, are awarded to punish a Defendant or to deter a Defendant and others from similar conduct in the future; that is, to make an example of the Defendant.

Punitive damages are sometimes called exemplary damages. I will discuss punitive damages with you in more detail in a minute.

First, let me tell you a little more about actual damages.

* * *

As I told you earlier, punitive damages are awarded to punish the wrongdoer, to deter the wrongdoer or persons from similar conduct, and to make an example of the Defendant.

They are also to vindicate a private right of the Plaintiff.

What would justify an award of punitive damages? Well, before you can award punitive damages, you must first have found that the Plaintiff was entitled to actual damages.

You cannot award punitive damages if you do not award actual damages.

It would be necessary for the Plaintiff to prove that the Defendant was more than merely negligent. The evidence must show that the Defendant was reckless, wilful or wanton and was acting with a conscious failure to exercise reasonable care.

If you find that the Plaintiff is entitled to punitive damages, you should include such damages in your verdict and award the amount that you consider reasonable and proper in light of the circumstances which surround the case.

When under proper allegations the Plaintiff proves a wilful, wanton, reckless, malicious violation of his rights, it is not only the right but the duty of the jury to award punitive damages.

The amount of punitive damages is determined by the character of the wrong which is committed, the punishment which should be applied, and the party's ability to pay.

* * *

THE COURT: Mr. Foreman and ladies and gentlemen of the jury, we have three questions from you, I believe.

One is, are we allowed to ask if the damages we award, if any, are going to be paid by the insurance company.

Two, if so, are punitive damages, if any, covered under liability.

* * *

But the ability of a Defendant to pay actual damages is not a consideration. However, the ability of the Defendant to pay punitive damages is a consideration, and for that reason you may consider the evidence that has been presented with regard to the net worth of the Defendants which by stipulation between Plaintiff and the Defendants is Three Hundred Fifty Thousand Dollars.

That is something you may take into consideration along with the other factors which I earlier described to you, the character of the wrong committed and the punishment which should be applied.

So to go back over it, don't consider whether or not there is insurance. Secondly, with regard to any award of actual damages, if you find such an award is proper, and as to the amount, do not consider a Defendant's ability to

pay but a Defendant's ability to pay may be considered by you in connection with any award, if you find one to be proper, with regard to punitive damages.

APPENDIX B

VIII. The trial court erred in denying the Defendants' Motion to Strike punitive damages. Punitive damages violate the equal protection and due process clauses of the United States Constitution and the Constitution of the State of South Carolina.

IX. The trial court erred in denying the Defendants' Motion for JNOV, New Trial, New Trial NISI, and Remittitur. The jury verdict was not supported by the evidence and was the result of passion, prejudice and caprice.
